



Montanans for Rick Hill

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Helena, Montana 59624
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JUN 1 11 27 AM '98

F. Andrew Turley, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

May 29, 1998

RE: MUR 4736 -- RESPONSE TO THE MONTANA DEMOCRATIC
PARTY COMPLAINT AGAINST RICK HILL FOR CONGRESS et al.

Dear Mr. Turley:

On April 13, 1998, you informed the Rick Hill for Congress Committee ("Hill Committee") of an administrative complaint filed by the Montana Democratic Party ("MDP") against it, TRIAD Management, and several other organizations. This letter responds to that complaint. Hill Committee employees will be filing affidavits with the Commission in response to this Complaint within the next two weeks.

The MDP's complaint fails to state a violation of the Federal Election Campaign Act ("Act") by the Hill Committee and should be dismissed. The complaint relies on one document and facts the MDP "suspects." It offers almost no evidence of any specific wrongdoing, and self-servingly ignores relevant exculpatory documents. MUR 4736 is a speculative complaint filed in bad faith for partisan political purposes. The Commission should promptly dismiss MUR 4736 as it relates to the Hill Committee.

I. Issue Advertisements Are Not Subject to Limitation

The MDP complaint fails to state a violation of law. The entire basis for this complaint -- allegations of issue ads coordinated with outside organizations - was directly addressed and dismissed by Attorney General

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Janet Reno in 1997. According to Attorney General Reno, the extensive coordination of issue advertising between a political committee (the DNC) and a federal candidate (President Clinton) did not transform tens of millions of dollars in ads into in-kind contributions. Attorney General Reno wrote:

With respect to coordinated media advertisements by political parties (an area that has received much attention of late), the proper characterization of a particular expenditure **depends not on the degree of coordination**, but rather on the content of the message. [Issue ads] . . . are not subject to any applicable limitations on coordinated expenditures by the party on behalf of its candidates.

See Letter from U.S. Attorney General to the Honorable Orrin G. Hatch, April 14, 1997, page 4 (emphasis added).

The MDP has not alleged that TRIAD's ads included express advocacy. The advertisement script attached by MDP includes no words of express advocacy, nor is its only reasonable interpretation an electioneering message. According to the U.S. Supreme Court and multiple lower courts, ads such as the one in question are properly viewed as "issue ads," protected by the First Amendment to the Constitution and not subject to the Act's prohibitions and limitations. *See, Buckley v. Valeo*, 424 U.S. 1 (1976); *see also FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986); *FEC v. Christian Action Network*, 92 F.3d 1178 (4th Cir. 1996) (*per curiam*) (*clarifying the meaning of express advocacy*).

Lacking express advocacy, the independent advertising at issue in this complaint falls outside the scope of the FECA. Thus even if it had been coordinated with a federal candidate (it was not), Citizens for Reform's issue speech would not have violated federal law. *See Reno Letter*. The complaint should therefore be dismissed.

II. MDP Provides Insufficient Evidence of Coordination Between the Hill Committee, TRIAD, and the Other Named Organizations

Even if it rejects the Attorney General's interpretation of the law or deems the advocacy to be express, the Commission should dismiss this complaint because its sweeping allegations of coordination are unfounded and contrary to fact. The advertisements in question were not part of

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"active cooperation and coordination" between TRIAD and the Hill Campaign and do not qualify as contributions to the campaign.

The MDP complaint provides "evidence" of exactly one meeting to substantiate its allegations of "in-depth" coordination. That meeting occurred on September 24, 1996. TRIAD representative Carlos Rodriguez requested the meeting. He said he was from a group that provided advice on issues and campaigns to its members. The Hill Committee had no prior knowledge of TRIAD and agreed to meet with Mr. Rodriguez, as the Committee did with countless groups and individuals who were potential supporters. MDP then relies upon Mr. Rodriguez's post-meeting memorandum -- which was not reviewed by, intended for or shared with the Hill Committee -- to presume facts not in the record, contrary to the evidence but necessary to substantiate MDP's conspiracy theory.

Commission regulations do not prohibit campaign committees from meeting with citizens and potential supporters to discuss campaign themes, positions on issues and distinctions between themselves and their opponents. Even when meeting with agents of "independent expenditure" (i.e. express advocacy) committees, campaigns are not prohibited from having discussions about their campaigns. Rather, Commission regulations only prohibit independent expenditures based upon:

Information about the candidate's plans, projects or needs provided to the expending person by the candidate, or by the candidate's agents, **with a view toward having an expenditure made.** 11 *C.F.R. Section 109.1(b)(4)(i)(A) (emphasis added).*

In the case at hand, no one from the Hill Committee met with Mr. Rodriguez "with a view toward having an expenditure made." The four Hill Committee employees and agents who met with Mr. Rodriguez did so only that once, seeking the endorsement of (and direct contributions from) conservative TRIAD supporters. None of the campaign officials or agents who met with Mr. Rodriguez knew or had reason to believe TRIAD was contemplating issue advertising. None of the campaign officials or agents specifically requested that TRIAD run or commission advertising on the campaign's behalf. And no one from the Hill Committee knew or had reason to believe that Mr. Rodriguez had any association with any issue advertising organizations.

It is important to observe that the Hill Committee did not condone or approve of Citizen for Reform's issue advertisement. To the contrary, just days after the advertisement first aired the Hill Committee attorney wrote

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to E. Mark Braden, attorney for Citizens for Reform, "demand[ing] that Citizens for Reform immediately stop airing these advertisements." See Letter from Tom Hopgood to E. Mark Braden of Oct. 25, 1996 (attached). In that letter the Hill Committee cautioned that "Mr. Hill was not consulted about these ads, had no knowledge of their existence and most assuredly disapproves of their content." Id. Six days later the Hill Committee itself sought the Commission's help in combating the ad and sanctioning Citizens for Reform, filing a complaint with the General Counsel's office. See FEC Complaint Against Citizens for Reform, Filed Oct. 31, 1996 (attached). To date the Hill Committee has heard nothing further from the Commission regarding its complaint, perhaps because the Commission concluded the ads were "issue ads."

Furthermore the U.S. Senate Government Affairs Committee examined the 1996 activities of TRIAD and Citizens for Reform, among other groups, in its 1997 investigation. That Committee "found evidence that indicates that the Hill campaign did not ask Triad to air these ads." See Report of the U.S. Senate Government Affairs Committee at 27. The Senate Committee found that "there is no basis to conclude that Triad illegally or improperly coordinated issue ad expenditures with the Hill campaign." Id. at 29.

The MDP complaint is baseless as it relates to the Hill Committee. Although MDP could have sought Commission action against the Citizens for Reform ad in 1996 -- as the Hill Committee did -- MDP waited for almost two years, seeking to manipulate the FEC enforcement process for partisan political purposes. MDP offers no evidence to support its allegations other than the Rodriguez memorandum (and news accounts of that memo), and MDP ignores the Hill Committee's public and vehement objections to the ad in question. Lacking evidence or precedent pointing to any wrongdoing by the Hill Committee, MUR 4736 should be dismissed.

Respectfully Submitted,



Gary Demaree, Treasurer
Rick Hill for Congress Committee

LUXAN & MURFITT

PROFESSIONAL LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW

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 TOM K. HOPGOOD
 GREGORY A. VAN HORSSEN
 PATRICK F. HOOKS
 KRISTI BLAZER
 CANDACE C. TORGERSO

WALTER S. MURFITT OF COUNSEL
 M. J. LUXAN (1918-1984)

October 25, 1996

VIA FAX: 202-861-1783

Mr. E. Mark Braden
 Baker & Hostetler
 Washington Square, Suite 1100
 1050 Connecticut Avenue N.W.
 Washington, DC 20036-5304

RE: Citizens for Reform

Dear Mr. Braden:

As you are aware, Rick Hill is the Republican candidate for Montana's lone seat in the United States House of Representatives. This firm represents the Rick Hill for Congress Committee in connection with recent ads which have been running on Montana TV and which are sponsored by your client, Citizens for Reform.

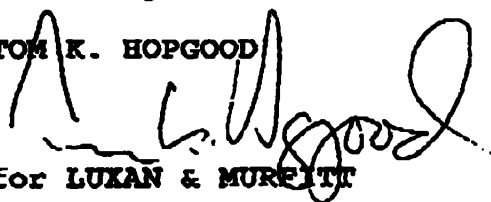
Per our conversation this morning, Mr. Hill was not consulted about these ads, had no knowledge of their existence and most assuredly disapproves of their content. Be advised that your client's unwanted intrusion into this congressional campaign is, in Mr. Hill's words: "Unconditionally unwelcome."

As I informed you this morning, this type of overtly negative campaigning simply does not work in Montana. Montana is commonly known as "The Last Best Place", and we who live here believe that to be true. In Montana, a person's word is his bond and major transactions are commonly accomplished on no more than a handshake. Simply put, Montanans do not need or want the type of campaigning embodied in your client's ads.

On behalf of the Rick Hill for Congress Committee, we demand that Citizens for Reform immediately stop airing these advertisements.

Sincerely,

TOM K. HOPGOOD



for LUXAN & MURFITT

TKH/kp

cc: Rick Hill for Congress Committee

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Chairman Stan Stephens
Co-chairmen: Senator Conrad Burns & Dwight MacKay

Rick Hill for Congress Committee
Placer Center, Suite 200
Post Office Box 1256
Helena, Montana 59624

October 31, 1996

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

To Whom it May Concern:

I am the Manager of the Rick Hill for Congress Committee. Rick Hill is the Republican candidate for the United States House of Representatives for the district of Montana. Rick Hill's opponent is Bill Yellowtail.

Please accept this letter as a complaint by me, as manager of and on behalf of the Rick Hill for Congress Committee. My full name and address are:

Charmaine D. Murphy
Rick Hill for Congress Committee
P.O. Box 1256
Helena, MT 59624

My telephone number and fax number are:

(406) 443-5459
(406) 449-4020 (fax)

I make the statements contained herein of my own personal knowledge and not on information and belief. This complaint is against a group called Citizens for Reform. I do not know the address of the group, but on information and belief I do know that it is headquartered in Washington, D.C.. I am further informed that the counsel for Citizen's for Reform is Mark Braden of Washington, D.C.. His address is:

Mr. E. Mark Braden
Baker & Hostetler
Washington Square, Suite 1100
1050 Connecticut Avenue N.W.
Washington, DC 20036-5304

Office of General Counsel

October 31, 1996

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The group is responsible for running a television advertisement the script of which is attached as exhibit A.

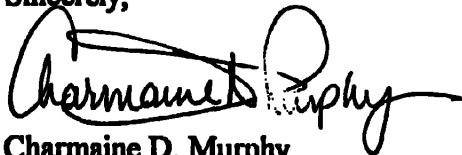
We believe the ad to be a communication which is the result of an independent expenditure pursuant to 2 USCS Section 441d. We believe the communication expressly advocates defeat of a clearly identified candidate, namely, Bill Yellowtail. Although all the allegations mentioned are, in fact, admitted to by Mr. Yellowtail and are a matter of public record, the ad is itself extremely negative, derogatory and demeaning. We would respectfully submit that it is far beyond the pale of issues advocacy.

The communication is most assuredly not authorized by Rick Hill, his authorized Political Committee or its agents. The communication does not bear the required statement that it is not authorized by the candidate, his authorized Political Committee or its agents in violation of 2 USCS Section 441d; 11 CFR Section 110.11(a)(1)(iii).

In point of fact, Citizen's for Reform has been told that this ad is not authorized, and the Rick Hill for Congress Committee has demanded that Citizen's for Reform immediately cease and desist in making these communications.

We urge your expeditious action on this complaint.

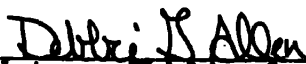
Sincerely,



Charmaine D. Murphy
Manager, Rick Hill for Congress Committee

STATE OF MONTANA
County of Lewis & Clark

SUBSCRIBED AND SWORN TO before me the 31st day of October 1996.


Notary Public for the State of Montana
Residing at Helena, Montana
My Commission Expires: 4/24/2000

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